Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Public Service Alliance of Canada,

complainant,

and

The British Columbia Corps of Commissionaires,

respondent.

Board File: 27711-C
Neutral Citation: 2011 CIRB **586**
April 29, 2011

A panel of the Canada Industrial Relations Board (the Board), composed of Mr. William G. McMurray, Vice-Chairperson, and Messrs. David Olsen and John Bowman, Members, considered the above-noted complaint. A hearing took place in Vancouver, British Columbia, on May 4, 5 and 6, 2010. A further consecutive day of hearing had been scheduled, but was not used.

Appearances

Messrs. Chris Buchanan and Brett Matthews, for the Public Service Alliance of Canada;
Mr. Keith J. Murray, for The British Columbia Corps of Commissionaires.

These reasons for the majority decision were written by Mr. William G. McMurray, Vice-Chairperson. The dissenting opinion was written by Mr. John Bowman, Member.

I–Nature of the Complaint

[1] On September 8, 2009, the Public Service Alliance of Canada (the PSAC or the union) filed a complaint with the Board pursuant to section 97(1) of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*), alleging that The British Columbia Corps of Commissionaires (the Corps or the employer) committed an unfair labour practice in violation of section 94 of the *Code*. The union alleges that the employer has a practice of intentionally overbidding on various contracts for the services it provides, once it learns that the union is taking steps to become a certified bargaining agent for a unit of its workers. The union claims that the employer's objective, through the higher bid, is to lose the contract. Specifically, the union alleges that, on September 24, 2008, the employer significantly increased its bid for one of the services it provided to the Vancouver International Airport Authority (the Airport Authority) once the employer learned of the union's plan to organize those workers. The union contends that the employer would rather lose the contract than continue to provide the services thereunder with a unionized workforce.

II–Overview

[2] The hearing of the complaint focused on the wildlife control contract whereby a group of commissionaires provide wildlife control services to the Airport Authority. The Corps has held an uninterrupted series of annual contracts to provide wildlife control services to the Airport Authority or its predecessors for a period of some 20 years. The union alleges that, once the Corps learned, on or about September 23, 2008, of the union's plans to organize a unit of those commissionaires providing the wildlife control services, the Corps submitted a new bid on September 24, 2008, to the Airport Authority, containing significantly higher rates for its services for 2009. The Airport Authority ultimately decided not to award the wildlife control contract for 2009 to the Corps. The gist of the union's complaint is that the employer intentionally increased its bid to make it commercially unattractive to the Airport Authority, and that the Corps was motivated to increase the bid by anti-union animus, which behaviour is prohibited by section 94 of the *Code*. By way of remedy, the union is seeking, among other things, a declaration of a breach of the *Code*, a cease and desist order, as well as a "make-whole" order.

[3] Although the union alleges that the Corps's September 24, 2008, bid was tainted by anti-union animus, the union states that it only became aware of the evidence to support its unfair labour practice complaint, for the first time, when a third party produced certain documents to it on or about June 25, 2009, as part of another legal proceeding.

[4] The employer denies that its actions were tainted by anti-union animus and submits that the complaint is untimely.

III–Preliminary Issue: Timeliness of the Complaint

[5] A review of the pleadings raised some obvious questions about the timeliness of the complaint. As a general rule, unfair labour practice complaints are to be filed within 90 days of the "triggering" event. In addition to the wildlife control contract, the complaint referred to the loss of a number of different contracts dating back over a number of years. In the specific context of the loss of the wildlife control contract, the union relied on the Corps's September 24, 2008, email to the Airport Authority that set out the higher proposed billing rates for 2009, yet the union filed its complaint on September 8, 2009, considerably more than 90 days after the date of the subject email.

[6] By letter dated December 1, 2009, the Board asked the parties for additional submissions on the issue of timeliness. The Board considered those written submissions and advised the parties, by letter dated January 13, 2010, that the complaint, at least with respect to the allegations concerning the loss of the wildlife control contract, was timely. The parties were therefore aware, prior to the start of the hearing, that the Board did not wish to hear evidence regarding other service contracts that the Corps lost, or may have lost, prior to 2008.

[7] These are the reasons for the Board's "bottom-line" decision on timeliness, communicated by letter on January 13, 2010.

[8] The right of a union to file an unfair labour practice complaint and the time period in which any such complaint may be made to the Board are set out at sections 97(1) and (2) of the *Code*:

> 97.(1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that
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> (*a*) an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has contravened or failed to comply with subsection 24(4) or 34(6) or section 37, 47.3, 50, 69, 87.5 or 87.6, subsection 87.7(2) or section 94 or 95; or
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> (*b*) any person has failed to comply with section 96.
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> (2) Subject to subsections (4) and (5), a complaint pursuant to subsection (1) must be made to the Board not later than ninety days after the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[9] In other words, the *Code* anticipates that an unfair labour practice complaint will generally be filed within 90 days of actual or deemed knowledge of the relevant events.

[10] The parties themselves readily acknowledged, through their additional written submissions, that the timeliness debate focused solely on the wildlife control contract and, more specifically, on the date on which the union became aware of the contents of the employer's revised September 24, 2008, bid. The allegations in the complaint regarding other contracts were plainly out of time. Among other possible "trigger" dates to the 90-day statutory time limit, the employer argued that the union was generally aware of the increased bid by March 26, 2009, as a result of information obtained through the settlement of other litigation related to the wildlife control contract involving other respondents. The Corps therefore argued that the union had an obligation to file its complaint within 90 days thereof. In response, the union stated that it did not have actual possession of the details of the revised bid until a copy of the September 24 bid was produced to it by a third party. In the circumstances of this case, the Board rejects the contention that general awareness of the fact that a revised bid had been submitted was sufficient to cause the time limit to run. The Board is satisfied that the union did not have possession and knowledge of the relevant documents in support of its complaint about the loss of the wildlife control contract until those documents were produced to it on or about June 25, 2009.

[11] For the purposes of section 97(2) of the *Code*, the Board found that June 25, 2009, was the date on which the union knew or ought to have known of the circumstances giving rise to the complaint related to the loss of the wildlife control contract. Both parties acknowledged that the complaint was filed with the Board within 90 days of June 25, 2009. The Board, accordingly, found the portion of the complaint dealing with the wildlife control contract to be timely.

IV–Issues to be Determined

[12] At the close of the hearing, the following issues were to be determined:

> A–Does the reverse onus provision at section 98(4) of the *Code* apply?
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> B–If so, has the employer satisfied the Board that the employer's decision, communicated to the Airport Authority on September 24, 2008, to increase its bid on the wildlife control contract, was not tainted by anti-union animus?
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> C–Has the union satisfied the Board that the employer, or a person acting on behalf of the employer, interfered with the formation of a trade union, or the representation of employees by the trade union, or otherwise acted contrary to section 94 of the *Code*?
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> D–What remedy, if any, is appropriate?

V–Relevant Statutory Provisions

[13] In the complaint now before the Board, the union claims that the employer has violated sections 94(1)(*a*), 94(3)(*a*)(i) and 94(3)(*e*) of the *Code*.

[14] Section 94(1)(*a*) of the *Code* prohibits, among other things, an employer from interfering in the representation of employees by a trade union:

> 94.(1) No employer or person acting on behalf of an employer shall
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> (*a*) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union.

[15] Section 94(3)(*a*) of the *Code* prohibits, among other things, an employer from terminating or adversely affecting the employment of a person because of his or her actual or proposed participation in a trade union:

> 94.(3) No employer or person acting on behalf of an employer shall
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> (*a*) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person
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> (i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union.

[16] Section 94(3)(*e*) of the *Code* prohibits, among other things, an employer from seeking to compel a person not to become a member of a union:

> 94.(3) No employer or person acting on behalf of an employer shall
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> ...
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> (*e*) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from
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> (i) testifying or otherwise participating in a proceeding under this Part,(ii) making a disclosure that the person may be required to make in a proceeding under this Part, or
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> (iii) making an application or filing a complaint under this Part.

[17] Where, as here, a party alleges a violation of section 94(3) of the *Code*, then regard must be had to the "reverse onus" provision at section 98(4) of the *Code*:

> 98.(4) Where a complaint is made in writing pursuant to section 97 in respect of an alleged failure by an employer or any person acting on behalf of an employer to comply with subsection 94(3), the written complaint is itself evidence that such failure actually occurred and, if any party to the complaint proceedings alleges that such failure did not occur, the burden of proof thereof is on that party.

[18] In other words, the common legal dictum "he who asserts must prove" does not always apply to certain types of unfair labour practice complaints: by virtue of section 98(4) of the *Code*, there are certain circumstances where the respondent to an unfair labour practice complaint bears the burden of proving that an unfair labour practice did not occur.

VI–The Evidence

[19] The Corps called two witnesses: Mr. Douglas Stuckel, Senior Vice-President, Operations and Securities Solutions (the SVP), and Mr. Allen Batchelar, Chief Executive Officer (the CEO). Both individuals were closely involved, along with the Vice-President, Finance (the VP Finance), in establishing and negotiating the billing rates under the wildlife control contract. The Corps did not call the VP Finance as a witness. The Corps agreed to present its evidence first, without prejudice to its position that the reverse onus provision of the *Code* did not properly apply to the factual situation disclosed in the PSAC's complaint. The union relied on the reverse onus provision of the *Code*. The union elected not to call any witnesses. The union did not, therefore, provide the Board with any evidence in support of that portion of its claim for a remedy that included a "make-whole" order. The following summary of the evidence is not exhaustive; it highlights those portions of the evidence that the Board considers to have the greatest relevance.

A–Background Information

[20] The complainant, the PSAC, is a trade union, operating throughout Canada. It began organizing various units of commissionaires employed by the Corps in the province of British Columbia in or around 2001. At various times, it has been the certified bargaining agent of various units of commissionaires providing services under various contracts within the province. Those certifications have been granted under either the *Code* or under provincial labour legislation, as the case may be, depending on the nature of the services provided.

[21] The respondent, the Corps, is a not-for-profit society. It provides a range of security and other services, pursuant to various contracts, at a number of sites across mainland British Columbia. Its mandate is to provide employment for, among others, former military and the

Royal Canadian Mounted Police personnel. The Corps employs over 1500 employees, the majority of whom work as commissionaires. The Corps provides services to the federal, provincial and municipal governments and related agencies as well as to private clients. The Corps has provided wildlife control services to the Airport Authority for a number of years. Technically, the wildlife control contract is an annual purchase order. The contract is unique. The Corps does not provide wildlife control services to any other clients. At various times, the Corps holds or has held other service contracts at the Vancouver International Airport including contracts related to the operation of parking shuttles and parking lot cashiers.

[22] Approximately 14 commissionaires are qualified and employed to work as wildlife control officers pursuant to the wildlife control contract. There was evidence of the extensive training a commissionaire requires to become a wildlife control officer as well as particulars of the licences and permits that they must hold. The extent of the training, licences and permits distinguishes the wildlife control officers from the commissionaires who provide the more customary security or building access services.

[23] There have been a great number of references throughout this proceeding to "billing rates" and to "pay rates" under the wildlife control contract. The terms are not synonymous. Billing rates are the rates that the Corps negotiates each year and then bills to the Airport Authority for the services of the wildlife control officers. The billing rates are intended to provide the Corps with sufficient revenue to cover the pay rate, the associated benefit load and other overhead costs, including an element of what, in other corporations, would be commonly called profit. The Corps, as a not-for-profit society, says that it redirects its profit, if any, to its employees in the form of wages or profit sharing. Pay rates are the hourly rate that the Corps pays to the wildlife control officers.

[24] The Corps has a right of first refusal to provide commissionaires for building access control services to the federal government under the National Master Standing Offer (NMSO). The federal government fixes, each year, the allowable overheads for the services provided by the Corps to the federal government pursuant to the NMSO. The Corps undertakes to respect that same overhead figure in other contracts. The Corps endeavours to maintain its billing rates at a fixed percentage above the underlying pay rates where possible. The Corps says that it will accept lower overhead

percentages for a given customer in an "ability to pay" situation. The Corps was of the view, however, that there was no question concerning the ability of the Airport Authority to pay the desired billing rates.

B–Negotiation History

[25] The Board heard considerable evidence from the SVP and the CEO regarding the annual negotiation of the billing rates for the wildlife control contract with the Airport Authority.

1–Negotiation of 2006 Billing Rates

[26] By letter dated August 25, 2005, the Corps advised the Airport Authority of its desire to implement a three-year plan to increase its billing rates for the wildlife control contract in order to increase the pay rates for the various officers. The three-year plan was to begin in January 2006. The letter emphasizes that the proposed billing rate increases set out in the letter were essential to provide competitive pay rates commensurate with the extensive training and licence requirements of a wildlife control officer. The letter expressly mentions that the proposed increases were needed "[t]o attract and retain the most suitable personnel" to work as wildlife control officers. Appended to the letter was a chart showing, among other things, the proposed billing rates for each of the classifications of wildlife control officers as well as the underlying proposed pay rates. The letter does not indicate whether the operation of the wildlife control contract was or was not viable in 2005.

[27] Among the various job classifications for the wildlife control officers, the position of senior wildlife control officer (senior officer) was occupied by the greatest number of commissionaires. The Corps proposed to increase the billing rate for the senior officers from approximately $18.30 per hour to $20.10 per hour in 2006. The proposed 2006 billing rates cannot directly be compared with those from 2005 since the Corps reduced the number of classifications and adopted new job titles.

[28] The Airport Authority ultimately agreed to the proposed 2006 billing rates, but not to a three-year plan. The Airport Authority continued to treat the wildlife control contract as the annual

purchase order that it was. It appears that the purchase order could be terminated by either party on 30 days notice.

2–Negotiation of 2007 Billing Rates

[29] By letter dated July 17, 2006, the Corps advised the Airport Authority of the proposed 2007 billing rates for the wildlife control contract. The Corps proposed to increase the billing rate for the senior officers from $20.10 per hour to $21.85 per hour (inclusive of a proposed $0.50 per hour safety premium). Unlike the similar letter from the year before, the Corps's July 17, 2006, letter does not break out, as a discrete item, the underlying pay rates for each of the proposed billing rates. The letter again emphasizes the Corps's desire to increase the billing rates to improve pay levels to reflect, what it called, the high level of training and other requirements necessary to perform the duties and responsibilities of a wildlife control officer. The letter again expressly mentions that the increases were needed to attract and to retain suitable commissionaires for the positions of wildlife control officer.

[30] On December 7, 2006, the Corps sent an email to the Airport Authority indicating that it had not provided the Corps with its expected confirmation of the proposed 2007 billing rate increases. In that email, the Corps advised the Airport Authority that the Corps intended, on January 1, 2007, to implement the proposed billing rates minus the disputed safety premium. The email also expressly mentions that the Corps is "taking quite a beating" on the wildlife control contract given the high cost of overtime and the cost of repairs to vehicles. The Airport Authority responded on December 9, 2006, indicating, among other things, that it could not agree to the safety premium in its current budget cycle and, in effect, that it would only agree to 50% of the balance of the proposed 2007 billing rates increases.

[31] In an internal email, the Corps qualified the Airport Authority's response as a "very late-in-the-game unsavoury surprise" that reflected "no spirit of respect for our service delivery." The internal recommendation was not to back down from the proposed rates. The Corps responded to the Airport Authority by email dated December 12, 2006; the Corps maintained its proposed billing rate increases, arguing that it was consistent with its desired three-year plan to bring the wage rates into

line with those paid at the airport for jobs that did not entail the same level of training, qualifications and responsibility as a wildlife control officer. The final paragraph of that email reads:

> As a not for profit society, we do not have the ability to absorb significant contractual costs. The contract must be viable for all concerned. I ask you to reconsider your proposal.

[32] No agreement had been achieved on the 2007 billing rates by the end of 2006. The Corps proceeded to implement the proposed 2007 billing rates effective January 1, 2007, and invoiced the Airport Authority accordingly. However, the matter was still being debated between the parties through an exchange of emails at the end of February 2007. The Corps's evidence at the hearing is that, in April 2007, the Airport Authority simply agreed to the 2007 billing rates, minus the $0.50 per hour safety premium, that the Corps had first proposed in its letter dated July 17, 2006. The Airport Authority then paid any outstanding invoices.

3–Negotiation of 2008 Billing Rates

[33] The negotiation of the 2008 billing rates followed a different pattern than the year before. The evidence of the SVP at the hearing was that there was no contact or discussion about the proposed 2008 billing rates between anyone at either organization, at either the management or the executive level, for the entire year. There was no evidence that the Airport Authority approached the Corps in the summer of 2007 or at any point in the year asking for proposed 2008 billing rates as an input for the purpose of preparing its budget.

[34] A letter dated December 17, 2007, from the Corps to the Airport Authority was put into evidence. It was in this letter that the Corps proposed its 2008 billing rates to the Airport Authority. The letter set out, in some detail, the key findings of a labour cost forecast for the province of British Columbia prepared by an independent human resources consultant for the Corps. These key points provided some detail to what the witnesses from the Corps had often referred to as the "labour crunch" in the lower mainland: the demand for labour was greater than the supply, causing, for example, wage rates in the region to increase much greater than the cost of living. The letter included, as an attachment, a chart indicating the proposed 2008 billing rates for each category of wildlife control officer. Unlike the chart in the similar letters from previous years, the chart did not

indicate the corresponding billing rate from the previous year and it did not indicate the proposed increase either in percentage terms or as a dollar amount. The oral evidence at the hearing confirmed that the December 17, 2007, letter was based on a 5% increase in billing rates, which, for the senior officer, provided a billing rate increase of $1.07 per hour. The evidence also indicates that the Airport Authority accepted the proposed billing rates, without discussion, and that the new billing rates were implemented effective January 1, 2008.

4–Pay Rate Increases in 2008

[35] The Corps presented considerable evidence about the actual pay increases it gave to the commissionaires, including the wildlife control officers, at various times in 2008. The pay increases were implemented in four phases throughout the year. First, all the commissionaires, including the wildlife control officers, received an across-the-board pay increase of $1.00 per hour in March 2008. Second, after the Corps collapsed the number of commissionaire classifications from eight to six, many of the commissionaires, and most of the wildlife control officers, received a pay increase of $0.25 per hour in April 2008. Third, all of the commissionaires working in the Metropolitan Vancouver area, which included all of the wildlife control officers, received a "Regional Allowance Metro Vancouver" (RAMV) of another $0.50 per hour in September 2008. Finally, all of the commissionaires, including the wildlife control officers, received a "Shirt Laundry Re-imbursement" (SLR) representing a pay increase of another $0.25 per hour in November 2008.

[36] It is therefore useful to compare the 2008 billing rate increase with the actual increase received, in wages, by the senior officers under the wildlife control contract. At the start of the year, the Corps increased its billing rate for a senior officer by $1.07 per hour while, throughout the course of that year, it increased the pay rate of the senior officer category by $2.00 per hour.

[37] Those are the main points in evidence concerning the negotiations between the parties to the wildlife control contract from August 2005 to mid-2008 and provide the background for the negotiation of the proposed 2009 billing increases.

5–Negotiation of 2009 Billing Rates

[38] The negotiation of the 2009 billing rates began in mid-August 2008. The Corps and the Airport Authority had a meeting scheduled towards the end of August 2008. The Airport Authority was again preparing its annual budget and asked the Corps for the information, for budget purposes, on the proposed 2009 billing rates to use in its budget preparation; the Airport Authority asked to be provided with that information prior to the beginning of September. By email dated August 19, 2008, Mr. Gary Smith, Manager, Enforcement Group (the MEG), at the Corps asked the SVP to provide "the appropriate information regarding the 2009 billing rate" for the manager to pass on to the Airport Authority for its budget purposes at the upcoming meeting. The email was sent on August 19 since the manager knew that the SVP would be leaving on vacation the next week. The SVP responded to the manager promptly. He copied his email to the CEO and the VP Finance. The email clearly states "you may quote a rate increase of 8%" for 2009. It also says "I have copied Al [the CEO] and Shaheen [the VP Finance], so unless you receive different directions from Al, you can present the 8% increase." The scheduled meeting occurred on August 28, 2008. Neither the Corps's CEO, SVP nor VP Finance attended. In an email dated August 28, 2008, the Corps's MEG indicated to the Airport Authority that "[o]ur billing rate for 2009 will increase by 8% effective January 1, 2008." This same email also expressly indicates that the main objective of the meeting was for the Corps to advise the Airport Authority of the 2009 billing rates so that the Airport Authority "may budget accordingly." Moreover, the email expressly refers to "an official letter" regarding the 2009 billing rate increases to be sent "sometime in the fall."

[39] The Corps introduced a number of documents that it claims it created between September 20, 2008, and September 24, 2008. These documents were entered as Exhibit 8, Tab 9. The SVP said that following his return from vacation on September 8, he had some reservations and concerns about the adequacy of the proposed 8% billing increase that the Corps had transmitted to the Airport Authority in, among other things, the August 28, 2008, email.

[40] The SVP said that he raised his concerns over the adequacy of the 8% figure with the CEO and that they had decided to analyze the costs of the wildlife control contract in greater detail. The evidence of the SVP was not clear as to the date, the time or the place the decision to scrutinize the

costs of the contract was taken. In any event, the SVP and the CEO agreed to wait for the results of the pay period ending September 20, 2008, since that was the first pay period in the year following the introduction of the $0.50 per hour pay increase, that is, the RAMV.

[41] The VP Finance created a document, referred to as a worksheet, which analyzed the hours worked under the wildlife control contract on a calendar-year basis as well as on a fiscal-year basis. This document is found at Exhibit 8, Tab 9, page 1. The SVP, the CEO and the VP Finance met on Monday, September 22, 2008, in the CEO's office to discuss the worksheet. This meeting occurred in the morning. The copy of the worksheet put into evidence contained the handwritten notes made by the CEO. The Corps concluded from the analysis of the worksheet that the wildlife control contract was in "a serious situation" since, in its view, the amounts that the Corps had billed to the Airport Authority under the contract were not sufficient to cover all of the costs of the contract. On the one hand, the worksheet indicated that the amounts billed under the contract were greater than the amounts paid out to the wildlife control officers in wages alone. On the other hand, in the view of the Corps, the amounts billed under the contract were not sufficient to cover all of the other inherent costs of the contract such as the benefit load and other overheads. Also, the Corps had only started to experience the impact of the $0.50 per hour RAMV paid to the wildlife control officers. Moreover, the Corps had not yet implemented a further $0.25 per hour allowance for the SLR.

[42] Stated another way, under the 2008 billing rates, based on the worksheet, the Corps said it was realizing a contribution of less than $0.40 per hour, whereas applying its standard multiplier, its contribution should have been several dollars per hour in order to cover all of its costs.

[43] The CEO and the VP Finance continued, therefore, to analyze the "numbers" under the wildlife control contract on the next day and together produced a spreadsheet on Tuesday, September 23, in the afternoon. That spreadsheet was discussed, with the SVP, at a meeting on Wednesday, September 24, 2008. That meeting took place in the morning. That spreadsheet is found at Exhibit 8, Tab 9, page 4. The parties agreed in the course of that meeting that the SVP would take the information set out in the bottom portion of that spreadsheet and forward it to the Airport Authority in support of the Corps's request for higher billing rates. The portion of the spreadsheet at issue contained five columns: the first being the position or classification level; the second column being the current, or

2008, billing rates; the third column being the proposed 2009 billing rates; the fourth column being the increase expressed in dollar figures; and the final column being the increase expressed on a percentage basis.

6–The September 24, 2008, Email

[44] Those same five columns from the spreadsheet are, in fact, reproduced in the email that the SVP sent to the Airport Authority on Wednesday, September 24, 2008, at 2:46 p.m., setting out the proposed 2009 billing rates for each classification of wildlife control officer (see Exhibit 8, Tab 11).

[45] The first paragraph of the September 24, 2008, email is critical. It reads:

> During our budget review process, which included the Wildlife Control Contract at YVR, we have determined that the 8% increase that was requested for January 1, 2009 to December 31, 2009 is not sufficient to meet the significant costs of the contract. Our review has determined that we are not covering the costs of the contract. The revenue shortfall is significant. For example, we are currently absorbing $0.75/hr just in the cost of overtime.

[46] The email also makes reference to the significant wage increases that the Corps provided to its employees in 2008 in order to attract and retain them. It also suggests that the Corps found that the wildlife control contract was being supported by its other contracts. The email contains a chart setting out each of the job classifications, the current billing rates, the proposed 2009 billing rates, as well as the proposed increases expressed as a dollar amount and as a percentage. In round numbers, the proposed 2009 billing rates for the various classifications increased in a range from about 20% to 30%. The billing rate for the senior officers was proposed to increase by about 23%.

[47] The final paragraph of the email is also critical. It reads:

> We require notice of acceptance of these 2009 rate increases by no later that [*sic*] November 1, 2008. If we have not received the notice of acceptance by this date, we intend to issue a Notice of Cancellation of the contract, effective December 31, 2008, as it will not be financially viable for us to continue the Wildlife Control Contract.
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> (emphasis in original)

[48] The Airport Authority replied by hand-delivered letter dated October 28, 2008. In that letter, the Airport Authority says that it "cannot agree to a commercial arrangement which would contemplate the payment of those wage rates." The letter goes on to say that if it continues to be the intention of the Corps to issue a notice of cancellation, the Airport Authority requests that the cancellation be effective only on March 31, 2009, to allow for a transition period to a new service provider. That letter refers to "wage rates" in the context of the Corps's September 24, 2008, email. The September 24, 2008, email does not make any express reference to wage rates. It refers to billing rate increases. The September 24, 2008, email does not disclose or break out the hourly rate the Corps intended to pay out to the wildlife control officers based on the proposed 2009 billing rates.

[49] In a meeting that same day, the Corps and the Airport Authority agreed that the contract would be cancelled but that it would be cancelled effective February 28, 2009, and not March 31, 2009, as requested. The Corps confirmed this cancellation date in a letter dated October 31, 2008, to the Airport Authority. That letter indicates, among other things, that the parties agreed to a 10% billing rate increase for the two-month transition period.

[50] The Corps also put into evidence a two-page form letter dated November 21, 2008, it sent to each of the commissionaires working under the wildlife control contract. It was signed by the CEO. The second page of the document set out the current 2008 pay rates and a column entitled "2009 Rejected Pay Rates." Neither of these two columns was found in the Corps's September 24, 2008, email to the Airport Authority. The two columns in the November 21, 2008, form letter are, however, consistent with the corresponding columns in the spreadsheet that the CEO, SVP and VP Finance discussed at the morning meeting on September 24, 2008. The November 21 letter informed the wildlife control officers that the Corps had lost the contract and that their jobs were guaranteed [only] until March 1, 2009.

[51] Among other things, the Corps advised the commissionaires working under the wildlife control contract that the Airport Authority had not agreed to the proposed 2009 rates and that, contrary to the expectations of the Corps, the Airport Authority would not be issuing a request for proposal (RFP). In their oral evidence, the witnesses from the Corps indicated that they anticipated that the Airport Authority may respond to the higher proposed 2009 billing rates by issuing an RFP.

Moreover, the witnesses said, in effect, that by virtue of its qualified and experienced wildlife control officers, the Corps would be well positioned to submit an attractive bid on any RFP. Over time, the Corps had come to see a possible RFP not as a threat to lose the wildlife control contract, but as a possible way to continue the contract at billing rates that addressed all of its objectives. Moreover, the letter explains that the Airport Authority advised the Corps on Monday, November 17, that a new service provider would, in effect, assume operation of the contract effective March 1, 2009. Appended to the letter to the affected commissionaires was a chart showing the current 2008 pay rates and the rejected 2009 pay rates for each of the classifications of wildlife control officer. In that letter, the Corps did not disclose, to its commissionaires, the proposed 2009 billing rates, which the Airport Authority rejected. The November 21 letter indicates on its face that the Corps gave an advance copy of the letter to the union by hand.

[52] As explained above, it was on June 25, 2009, that the union obtained a copy of the email dated September 24, 2008, in which the Corps advised the Airport Authority that the proposed 8% increase was not sufficient and that the proposed 2009 billing rates would have to increase by approximately 20% to 30%.

[53] It was the apparent discrepancy between the proposed 2009 pay rates appended to the November 21, 2008, letter (sent to the wildlife control officers) and the proposed 2009 billing rates set out in the Corps's September 24, 2008, email (sent to the Airport Authority) that caused the PSAC to file its complaint with the Board on September 8, 2009.

C–Union Cross-Examination of the Corps's Witnesses

[54] As previously stated, the union elected not to call any witnesses. The union did, of course, cross-examine each of the two witnesses called by the Corps. The union, through its cross-examination of the SVP, put into evidence the dates of the union's organizing activities in September 2008 involving the wildlife control officers and the extent of the employer's knowledge of those activities. The cross-examination demonstrated that the SVP was aware that the union held a meeting on September 22, 2008, with the wildlife control officers and demonstrated that the SVP learned of this September 22 meeting on September 23, 2008. He was so advised, on

September 23, 2008, by the Corps's MEG. The SVP said that he was advised that the union had organized "some type of meeting" with those commissionaires working on the wildlife control contract. The SVP admitted that he, in turn, passed the information on to the CEO and that he "expected" that the date on which he did so was also September 23, 2008.

[55] The Corps put forth various efforts, as indicated during the cross-examination of the SVP, to soften the blow of the loss of the contract on the wildlife control officers. They were given priority to work as commissionaires on the Corps's other new contracts, if any. The Corps also operates a reserve division and maintains a spare board. While neither apparently provides a guarantee of work, the reserve division periodically offers the possibility of work of three to four months duration while the spare board is "very busy" and offers a "fair amount of work" to those interested. [At the end of the hearing, the Board had no evidence or particulars as to whether the wildlife control officers took advantage of any of these options or, if so, whether they were or were not effective at mitigating the losses arising from the loss of the contract.]

[56] The union's cross-examination of the CEO focused on his views of the union and its efforts to organize the commissionaires, as indicated in three public letters the CEO had written and circulated to various commissionaires. The three letters are dated July 4, 2007, July 11, 2007, and September 22, 2008. The letters did not relate to or touch directly on the wildlife control contract or the commissionaires who provide services under that contract.

[57] The first CEO letter, dated July 4, 2007, was written in the context of a PSAC organizing drive of commissionaires working on various contracts that the Corps held with the Canadian Border Services Agency (CBSA). The union considered these labour relations matters to be within provincial jurisdiction and, at the time the letter was written, had applied to the British Columbia Labour Relations Board (BCLRB) to be certified as bargaining agent for a unit of commissionaires providing services under three CBSA contracts. The CEO's letter was written a few days in advance of a hearing by the BCLRB to determine, among other things, the level of support for the application and the appropriateness of the proposed bargaining unit or units. The Board will not summarize the entire letter, however, one illustrative sentence provides:

> ... We can also tell you that we prefer to work with you directly rather than through a third party union. However, at the end of the day, it is your decision and we respect your right to make an informed decision.

[58] The second CEO letter, dated July 11, 2007, was written in the context of the same organizing campaign and is addressed to all commissionaires working on the subject CBSA contracts. The letter, which was written one day after the BCLRB hearing, advised the commissionaires that the BCLRB had scheduled a meeting and informed them of the date, times and place of voting. At page 2 of the letter, under the subtitle "Our Opinion," the CEO stated:

> I personally hope you vote "No" to the Union – because the Corps believes the Union has little to offer commissionaires in return for the union dues you would be required to pay under any collective agreement negotiated between the Corps and PSAC. ...

[59] The letter concluded, at page 3, with a sentence that stated:

> At the end of the day – each of you should make a decision based on what you feel is best for yourself. While the Corps prefers to deal with you directly rather than through a third party union – we are certainly not concerned with dealing with PSAC, if that is how the majority of you vote. We have dealt with PSAC before – and we will not lose any sleep if we have to deal with them again; however, we honestly believe from experience that PSAC has very little to offer you.

[60] The third letter dated September 22, 2008, was addressed to all commissionaires working on the CBSA contracts at Library Square, at the CBSA Pacific Region Holding Centre and at VIA. It is entitled "Notice – Final Employer's Offer." In the course of its cross-examination, the union directed the CEO to the penultimate paragraph of his letter:

> We gave the union the date of September 30, 2008 to reach an acceptable agreement. This was not an arbitrary date as it is being portrayed. Among other things, it was based on our business cycle, available time and staff schedules. There was plenty of time to reach an agreement over the past eight months. We did it in three days with this union in the past. We no longer have the time or money to spend on this. It is now up to you. If you accept this proposal, then I truly believe that we can go forward with a highly competitive bid. If you reject it then we will have nothing on which to make a bid and we will not participate in the RFP process. Unfortunately we will then be forced to advise you that your last day of work with the Corps will be March 31st, 2009, the day our contract to provide this service ends.

[61] The three letters in question all refer to a contract or contracts between the Corps and the CBSA. The three letters do not refer to the wildlife control contract or to the union's efforts in September 2008 to organize the commissionaires who provide the wildlife control services. The

union reminded the Board that the CEO's third letter is dated September 22, 2008, the same date on which the union held its organizing meeting with the commissionaires working under the wildlife control contract and the same date on which the Corps's CEO, SVP and VP Finance met to review the worksheet setting out the costs of the wildlife control contract.

[62] It was on September 24, 2008, in the afternoon, that the Corps became aware of the PSAC's application to this Board to be certified as bargaining agent for a bargaining unit of wildlife control officers.

VII–Positions of the Parties

A–The Employer

[63] The primary legal argument advanced by the Corps relates to the reverse onus provision at section 98(4) of the *Code*. The Corps says that the reverse onus provision does not apply to the PSAC's complaint about the circumstances of the wildlife control contract. The corresponding legal argument is premised on the distinction between section 94(1) and section 94(3) of the *Code*. Although parties filing an unfair labour practice complaint with the Board commonly allege a violation of both sections 94(1) and 94(3), the provisions are distinct and each has its own individual ambit and scope. Moreover, of course, the reverse onus provision attaches only to complaints alleging a violation of section 94(3) of the *Code* and not to complaints alleging a violation of section 94(1) of the *Code*.

[64] According to the Corps, the circumstances set out in the PSAC's complaint regarding the increased bid on the proposed 2009 billing rates (set out in the email dated September 24, 2008) and the Corps's subsequent loss of that contract effective February 28, 2009, are circumstances that do not come within the ambit of section 94(3). The Corps argues that section 94(3) relates to alleged unfair labour practices against individual employees only. According to the Corps, complaints alleging an unfair labour practice relating to the closure of the business (resulting in the termination of employment of a number of employees all at the same time) fall within the ambit of

section 94(1) of the *Code* and only within the ambit of section 94(1). The Corps says, in effect, that the loss of the wildlife control contract is equivalent to the closure of a business.

[65] The Corps says therefore that there is no change in the burden of proof in this complaint and that the onus remains within the union to lead sufficient evidence to satisfy the Board that an unfair labour practice occurred. The Corps accepts that a union does not generally have to prove anti-union animus to succeed with a complaint under section 94(1) of the *Code*. The Corps, however, further nuances its argument to argue that, in the specific context of a complaint by a union alleging that an employer's closure of its business premises is an unfair labour practice, then, in those circumstances, the union is required to prove that the closure resulted from, in whole or in part, anti-union animus.

[66] The Corps also took the position, in its legal argument, that if the reverse onus did apply to the PSAC's complaint regarding the wildlife control contract, then the Corps had led sufficient evidence to disprove the alleged violation of section 94(3) of the *Code*.

[67] The principal legal argument of the Corps is based primarily on two decisions: a 2005 decision of this Board, *Société Radio-Canada*, 2005 CIRB 308, and a 2009 decision of the Supreme Court of Canada, *Plourde* v. *Wal-Mart Canada Corp.*, 2009 SCC 54 (*Wal-Mart*); [2009] 3 S.C.R. 465 (*Wal-Mart*).The Corps cites the Board's decision as authority for its proposition that there is a distinction, at law, between the scope of section 94(1) of the *Code* and the scope of section 94(3) of the *Code*. Moreover, based on the Board's decision in *Société Radio-Canada*, *supra*, the fact that a union alleges a violation of section 94(3) of the *Code* is not always, in itself, sufficient to bring the complaint within the scope of section 94(3).

[68] While the Corps adopts the whole of this Board's analysis at paragraphs 47 through 56 of the *Société Radio-Canada*, *supra*, decision, in argument, the Corps refers the Board particularly to paragraph 53:

> [53] Unlike the purpose of section 94(3) of the *Code*, which is to protect the rights of persons carrying on union activities, the purpose of section 94(1)(*a*) of the *Code*, which is much broader in scope, is to protect the rights of the union itself as an entity, including the rights of its members.

[69] As stated, the Corps urges the Board to find that the PSAC's complaint comes solely within the scope of section 94(1)(*a*) of the *Code* and to find, accordingly, that the union does not, therefore, have access to, or the benefit of, the reverse onus provision at section 98(4) of the *Code*. In short, the Corps says that, in the complaint before the Board, the onus remains with the PSAC to prove that the circumstances in its complaint constitute an unfair labour practice.

[70] The Corps relies upon the recent *Wal-Mart* decision as authority for the proposition that the definitive and final closure of a workplace is neither a "sanction" nor an "action" against an employee within the meaning of section 17 of the Quebec *Labour Code*, R.S.Q., c. C-27 (the Quebec *Code*) and, as such, is not therefore a circumstance that triggers the statutory presumption (or reverse onus provision) found at section 17 of the Quebec *Code*.

[71] The Corps's argument that the loss of the wildlife control contract is tantamount to a definitive closure of business is based on the Supreme Court of Canada decision in *Wal-Mart*. In that decision, the Supreme Court of Canada held, among other things, that the Quebec *Code* does not prohibit a definitive business closure and, by extension, where the Quebec Commission des relations du travail finds that such a business closure has occurred, it is not required or allowed to examine the motives behind the closing of the business. In these circumstances, the statutory presumption (or reverse onus provision) at section 17 of the Quebec *Code* does not apply. Accordingly, the Court found that employees who have been terminated as a result of a permanent business closure and who are seeking a remedy that includes reinstatement fall outside the scope of the statutory presumption.

[72] The *Wal-Mart* decision is based upon and is consistent with the Supreme Court of Canada decision in *I.A.T.S.E., Stage Local 56* v. *Société de la Place des Arts de Montréal*, 2004 SCC 2; [2004] 1 S.C.R. 43, which, in turn, endorsed the decision of the then Labour Court of Quebec in *City Buick Pontiac (Montréal) Inc.*, [1981] T.T. 22. The *Wal-Mart* decision is also based on a division, in the Quebec *Code*, which separates those provisions, including sections12 through 14 on one hand, and sections 15 to 19 on the other hand; moreover, the Court held that complaints, such as the numerous complaints from the various employees who saw their employment terminated upon the closure of the Wal-Mart store at issue, fell only within the group of provisions at sections 12

through 14 of the Quebec *Code* and, therefore, the employees did not have access to or the benefit of the statutory presumption at section 17 of the Quebec *Code*.

[73] By extension, the Corps now urges the Board to adopt a similar division between complaints falling within the scope of section 94(1) of the *Code*, on one hand, and complaints falling within the scope of section 94(3) of the *Code*, on the other hand. The Corps further asks the Board to find, in a parallel manner, that the PSAC, either on its own behalf or on behalf of the wildlife control officers, does not have recourse to the reverse onus provision at section 98(4) of the *Code*.

[74] The Corps argues that the case is primarily a case that turns on the facts and on the inferences the Board should or should not draw from those facts. The Corps addresses the rationale for the proposed increase in the 2009 billing rates by saying that the numbers are "perfectly justifiable" and "entirely defendable." The Corps held out the example of the position of a senior officer under the wildlife control contract. The Corps says that the rationale for the proposed 20% billing rate increase (an increase equivalent to just over $5.00 per hour) can be easily explained by breaking the proposed increase into three parts. The first part of the proposed $5.00 per hour billing rate increase was a $2.00 per hour increase to compensate the Corps for the full cost of the pay increases that it had already given out in 2008.

[75] For senior officers, the various pay increases phased in throughout 2008, including the $1.00 across the Board increase, the RAMV and the SLR totalled a $2.00 per hour pay increase. The Corps said, applying the usual multiplier, it needed a $3.00 per hour billing rate increase to cover the full or true costs of the $2.00 per hour pay increase. The Corps had, however, only negotiated a billing increase of about $1.00 per hour for 2008. Accordingly, the first $2.00 increase of the proposed $5.00 increase for 2009 was to recover the full cost of the pay rate increases that had already been granted in 2008.

[76] The second part of the proposed $5.00 per hour billing rate increase for 2009 represents another amount of $2.00 per hour. This was the amount required to cover the full or true costs of the proposed 2009 pay increase of about $1.30 per hour. The last part of the proposed $5.00 per hour

billing rate increase for 2009 was a remaining dollar to address concerns over the cost of overtime work, which had been an on-going debate for many years.

B–The Union

[77] The union does not share the employer's interpretation of section 94(3) of the *Code*. The union argues that the subject matter of its complaint falls clearly within the ambit of section 94(3) of the *Code*. By extension, it is a complaint that triggers the reverse onus provision of the *Code*.

[78] The union directs the Board to the text of section 98(4) of the *Code*, particularly to those words which provide that "the written complaint is itself evidence that such failure actually occurred." The union does not, therefore, accept the employer's argument that complaints under section 94(3) of the *Code* are only intended to address unfair labour practices against employees individually. The union sees no such limitation. The union argues with conviction that the employer's interpretation that section 94(3) of the *Code* does not apply in the case of a business closure would result in an anomaly since, if correct, it would mean that the termination of employment of one employee allegedly for anti-union motivation would get greater scrutiny under the *Code* than the termination of many employees.

[79] The union also emphasizes that the jurisprudence of this Board and its predecessor has consistently found that the employer is required to demonstrate that its actions were not tainted in any way of an anti-union animus. It is not, in itself, sufficient for an employer to provide a sound economic explanation or to provide a cogent business **rationale** for its decision. The employer must also demonstrate that its decisions were free from anti-union animus. The union directs the Board to a decision the latter issued, which provided that "[a]nti-union motives need only be a proximate cause for an employer's conduct to run afoul of the *Code*" (see *Pro-Tec Fire Services of Canada ULC*, 2005 CIRB 318, at paragraph 48, citing *Echo Bay Mines Ltd.* (1995), 99 di 78 (CLRB no. 1140)).

[80] The union began its factual arguments by agreeing with the employer's submission that this case turns primarily on the facts, rather than on the legal issues.

[81] The union spoke to the relationship between the Corps and the Airport Authority as indicated through the history of the negotiation of the billing rates over the last several years. The union disputed that the relationship was strained, as alleged by the Corps. The union points to the negotiations that led to the 2008 billing rates; the union described those negotiations as uneventful. Moreover, the union argues that if it was a strained relationship, as the Corps alleges, there then was an obligation on the Corps to conduct the negotiations with greater care and to negotiate, in the words of the union, in utmost good faith. The union then argues that the negotiations of the 2009 billing rates were not conducted with greater care. The union says, in effect, that the Corps had an obligation to alert the Airport Authority, informally and in a timely way, that the Corps would be submitting sharply increased 2009 billing rates. In other words, the union submits that once the SVP started to doubt the adequacy of the proposed 8% billing rate increase, then there was an obligation on him to alert the Airport Authority as soon as possible of the pending changes and not wait until the more formal submission of the increased rates he set out in the September 24, 2008, email.

[82] The union's argument also focused on the three CEO letters. The PSAC says that the three letters are evidence that the Corps is, in general, anti-union and is specifically anti-union regarding the PSAC. The union argues that there is a long history of the Corps being opposed to the PSAC as a representative of employees of the Corps. The union says that the three letters demonstrate the Corps's anti-union mindset. When the Corps learned of the efforts by the PSAC to organize the 14 commissionaires who were working under the wildlife control contract, the Corps, to use the words of the union, "could not resist the urge to tank the contract." In other words, the PSAC asserts that the Corps would rather lose the contract altogether than continue to provide the services thereunder to the Airport Authority with a unionized workforce. The union points, in particular, to the third CEO letter, the one dated September 22, 2008, as evidence of the strained relationship between the PSAC and the Corps overall, a letter that was issued at the same time that the union says the Corps learned of the efforts by the PSAC to organize the wildlife control officers.

[83] The union's argument also focused on the Corps's economic analysis of the costs of the contract and, specifically, on the Corps's selection of the multiplier. The union is generally skeptical of the analysis of the costs of the 2008 wildlife control contract and is particularly suspicious of the multiplier that the Corps used when establishing the increased 2009 proposed billing rates set out

in the September 24 email. The union does not accept the Corps's position that the Corps was losing money under the wildlife control contract in 2008 or that the economic situation of the contract was getting worse. The union submits that the 8% increase in the proposed billing rates presented to the Airport Authority in August would have been a product of a previous analysis by the Corps, even if the Corps did not disclose any such previous analysis or study of the costs of the contract. In that regard, the union asks the Board to draw an adverse inference from the fact that the Corps did not call Mr. Gary Smith to testify. Mr. Smith was the employee of the Corps, who reported to the SVP and who initiated the email exchange that resulted in the SVP instructing him to advise the Airport Authority that there would be an 8% across-the-board increase in the billing rates for 2009. The union further argues that there was no evidence that the wildlife control contract was unprofitable to the Corps. For example, the union indicates that, in each of 2005, 2006 and 2007, the billing rates were set in such a way as to provide a greater than normal pay rate increase to the wildlife control officers. Moreover, the union explains that in each of those years, apart from a refusal to implement a safety premium and a failure to resolve an ongoing debate concerning the cost and scheduling of overtime, the Corps ultimately got the Airport Authority to agree to the Corps's proposed billing rates.

[84] The PSAC was critical of the worksheet and the spreadsheet upon which the Corps relied. In the union's opinion, the worksheet and the spreadsheet were not, as alleged, a considered effort over a period of several days; the union points to errors in various calculations and other transposition mistakes to urge the Board to find that the evidence was, in effect, hastily assembled. The union asserts that no significant time was spent to prepare the analysis and "it only takes a second for the Corps to develop a spreadsheet" to support its position. In the alternative, the union says that if the wildlife control contract was unprofitable for the Corps (which the union denies), then there is an onus on the Corps to explain what the union sees as suspicious timing. Since, according to the Corps, this unprofitable situation had been going on for a number of years, the union asks: why did the Corps choose a date late in September 2008, the same date at which the union was conducting its organizing drive of the wildlife control officers, to "draw a line in the sand" with the Airport Authority?

[85] The union takes particular exception to the multiplier the Corps used when determining the billing rates that the Corps felt it needed to achieve in 2009 to make the wildlife control contract profitable. The union submits that the entire difference between the 8% billing rate increase proposed in August and the 20%-to-30% billing rate increase proposed in September can be explained by the Corps's choice of multiplier. According to the union's argument, the Corps's choice of a multiplier for 2009 was nothing more than picking a number out of the air. The union claims that the Corps's CEO was not aware of the multiplier the Corps used to determine the rates charged under the wildlife control contract in the previous year and, by extension, was not able to advise the Board of that multiplier. In that same vein, the union was critical of the Corps's failure to ascertain the actual benefit costs the Corps incurred for the 14 commissionaires under the wildlife control contract rather than using, as it did, a general proxy of the benefit costs for the entire group of some 1500 commissionaires.

[86] The Corps's decision to move to a higher multiplier when it became aware of the organizing effort of the PSAC is, according to the union, the sole cause of the significant increase in the 2009 proposed billing rates.

[87] In argument, the union pointed the Board towards other actions which, it says, demonstrate the Corps's anti-union animus. Consistent with its argument that the Corps had an obligation to negotiate with greater care, the union submits that the last paragraph of the September 24 email to the Airport Authority concludes with an ultimatum, which, in the circumstances, the union sees as inappropriate. While the union acknowledges that the Corps may have resorted to "hardball" tactics in billing rate negotiations in previous years, the union submits that the use of an ultimatum was unprecedented and was further evidence that the Corps's objective was to lose the contract. It further argues that there continued to be an onus on the Corps to contact the Airport Authority in the days following the transmission of the September 24 email, and to offer to continue to negotiate the 2009 proposed billing rates, which, according to the union, the Corps did not do.

[88] The union is critical of the Corps's failure to respond to the Airport Authority's letter of October 28, 2008; the union submits that the Corps should have used that letter as the grounds and the opportunity to go back to the Airport Authority to renegotiate the proposed 2009 billing rates to

arrive at a proposal on which both parties could agree and to have the wildlife control contract continue for another calendar year.

[89] The union is also critical of the Corps's November 21 letter advising the 14 wildlife control officers of the loss of the contract effective February 28, 2009. The union characterizes this letter as the Corps "intentionally misleading" the wildlife control officers. The union argues that the Corps intended to mislead the wildlife control officers since the letter does not disclose the significant increase in the proposed 2009 billing rates between August 28 and September 24; moreover, the letter does not, therefore, disclose that the increases were all directed to the overhead costs of the contract and would not have resulted in any corresponding pay rate increases to the individual wildlife control officers. Stated another way, the wildlife control officers would have seen the same increase in their pay rate in 2009, whether the parties would have agreed on a new contract that included either the 8% billing rate increase proposed in August or the 20%-to-30% billing rate increase proposed in September. The union urges the Board to find that the Corps wrote the November 21 letter in such a way as to mislead the subject commissionaires—and ultimately the PSAC—such that those commissionaires would have no cause to suspect that there was a significant and marked difference between the Corps's proposals of August and September. The union sees the November 21 letter as an effort by the Corps to throw the union "off the track" and to disguise an anti-union motivation, which the union says led to the significant increase, in September, in the proposed 2009 billing rates.

[90] As stated earlier in this decision, the union did not obtain a copy of the Corps's September 24 email until a copy was produced to it by a third party in the context of other litigation. That production occurred on or about June 25, 2009. The union was not, therefore, aware of the specific contents of the September 24 email when the union first received a copy of the Corps's November 21 letter to the wildlife control officers. Accordingly, at the time it was reading the November 21 letter, the union had no way of knowing the magnitude of the overall increases in the 2009 proposed billing rates generally or the proportion of those increases that were represented by the multiplier that the Corps used in its calculations to provide a sufficient overhead leading to the higher 2009 proposed billing rates. Again, as previously indicated, the union says that once it became aware of the specific content of the September 24 email and, therefore, became aware of the higher multiplier, it

understood that the difference in the Corps's proposed 2009 billing rates was entirely attributable to the higher multiplier. The union also submits that the Airport Authority took exception only to the higher overheads set out in the September 24 email and that, apparently, the Airport Authority was always willing to agree to the underlying proposed pay rates.

VIII–Analysis

[91] There was much discussion related to the appropriate burden of proof. As recently stated by the Supreme Court of Canada, in Canada, there is only one standard of proof in a civil case and that is proof on a balance of probabilities (see *F.H.* v. *McDougall*, 2008 SCC 53; [2008] 3 S.C.R. 41). Under the balance of probabilities test, a tribunal is required to scrutinize the evidence with care to determine whether it is more probable than not that an alleged event occurred. Further, the evidence must be "clear, convincing and cogent" to satisfy the balance of probabilities test. The Court stated:

> [30] ...
>
> The question in all civil cases is what evidence with what weight that is accorded to it will move the court to conclude that proof on a balance of probabilities has been established.

[92] It is, of course, critical for the tribunal to have regard to the totality of the evidence in the case.

[93] The Court stated, therefore, that there were no varying degrees of proof and that it would not be proper, for example, to have regard to "a very high degree of probability" of whether a fact did or did not occur. Those are questions of general law. The Board therefore finds that the onus of proof herein is the balance of probabilities. Accordingly, there are no shifting or varying degrees of probability within that civil standard.

A–Does the Reverse Onus Provision at Section 98(4) of the *Code* Apply to This Complaint?

[94] There was no common ground between the union and the employer on the application of the reverse onus provision at section 98(4) of the *Code* to the subject matter of the union's complaint regarding the alleged intentional loss of the wildlife control contract. In the specific context of the application of the *Code*, the parties agree that it is the complainant who bears the burden of proving

those allegations in a complaint regarding an alleged violation of section 94(1)(*a*). Stated another way, the parties agree that the burden falls on the PSAC to convince the Board that the employer or a person acting on its behalf participated in or interfered with the formation or administration of a trade union or the representation of the employees by a trade union.

[95] The parties also agree that section 98(4) of the *Code* shifts the burden of proof from the complainant to the respondent where a complaint alleges that the employer failed to comply with section 94(3) of the *Code*. That said, the employer argued vigorously that the complaint, as pleaded, is solely a complaint within the ambit and scope of section 94(1) of the *Code* and that the allegations in the complaint, when scrutinized, do not properly fall within the ambit of an alleged violation of section 94(3). In short, the Corps says that this is not a reverse onus case. It is also true that the employer was of the view that, if the reverse onus does apply, the evidence called by the employer was sufficient to discharge any burden of proof placed on it by the operation of section 98(4) of the *Code*.

[96] The Board is of the view that the rationale of the Supreme Court of Canada in the *Wal-Mart* decision is not applicable to the issues in dispute in the PSAC's complaint.

[97] The reasons of the Supreme Court of Canada for its decision in the *Wal-Mart* case, including the reasons set out in the dissenting opinion, make it clear that the *Wal-Mart* decision is grounded in the very specific statutory, legislative and judicial history of the Province of Quebec, going back to 1959: *Wal-Mart* decision at paragraphs 50, 58 and 61; see also paragraphs 68 and 87.

[98] Further, the *Wal-Mart* decision turns, first and foremost, on a finding of a final and permanent closure of a business; that is not the case before the Board here. The Corps was providing services to the Airport Authority under a 12-month contract that, technically, was a purchase order. The Corps says that it lost the contract for 2009. The union says that the Corps gave notice of termination of the contract. Either way, the Board does not see the loss of a service contract that is of only 12 months duration and that could be terminated on short notice by either party to be the legal equivalent of a final and permanent closure of a business.

[99] The Board is often called upon to determine issues involving the loss of service contracts. Most frequently, the Board has to determine cases involving the loss of three-year service contracts related to the provision of security services, and frequently airport security services. In that setting, which is somewhat analogous to the situation of the wildlife control contract, the Board does not consider the parties to the service contract to be operating a business in the conventional sense (see, for example, *GlobeGround North America Inc., doing business as Servisair/GlobeGround*, 2007 CIRB 391).

[100] Moreover, in the case before the Board, the Corps's evidence was that it intended, at all times, to continue to provide wildlife control services to the Airport Authority. It is true that the Corps was trying to do that by negotiating a billing rate that would allow the Corps to achieve its interrelated objectives of paying a competitive wage to the wildlife control officers while also recovering what it felt were its costs under the contract. The evidence of the Corps also addressed the possibility of the Airport Authority issuing an RFP. Again, the evidence of the Corps was that if the Airport Authority had issued an RFP, the Corps felt that it would have been well situated to submit a competitive bid, again with the goal of continuing to provide wildlife control services to the Airport Authority. Also, it is difficult to find the required element of finality and permanence in what the Corps alleges is a business closure since nothing prevents the Corps from bidding on, and potentially securing, the wildlife control contract at the Vancouver Airport in subsequent years. The Board is of the view that where the Corps's factual evidence is based on its continuing intention to provide wildlife control services to the Airport Authority on an ongoing basis, it is not consistent for the Corps to base its legal arguments on an alleged final and permanent business closure.

[101] The Board is satisfied that the PSAC's complaint comes within the ambit and scope of section 94(3) of the *Code*. The complaint was comprehensively drafted and, when filed, included a number of supporting documents. As such, the complaint was sufficiently pleaded to at least raise a *prima facie* violation of section 94(3)(*a*) of the *Code*; there was at least a possibility that the employer had refused to continue to employ one or more of the wildlife control officers on the basis that one or more of them had participated in the promotion or formation of a trade union, within the meaning of those words at section 94(3)(*a*) of the *Code*. The Board does not consider the dictum in the *Société Radio-Canada*, *supra*, case to be inconsistent therewith. It is true that many cases that

come before the Board alleging a violation of section 94(3) of the *Code* involve a situation where an employer terminates the employment of an employee who also happens to be either a union president or the internal union organizer. The PSAC's complaint does not fit easily within that customary paradigm where only one or two employees are terminated for alleged anti-union motives. However, it is also true that the scope of section 94(3) of the *Code* is broader than that customary paradigm.

[102] The Board accepts the premise that the scope of section 94(1) of the *Code* differs from the scope of section 94(3) of the *Code*. The Board accepts that its decision in *Société Radio-Canada*, *supra*, supports that distinction. The Board does not see, however, the *Société Radio-Canada*, *supra*, decision, and specifically the dictum at paragraph 53 thereof, to preclude the union, on behalf of one or more wildlife control officers, from filing a complaint under, among other provisions, section 94(3) of the *Code*. Having found that the PSAC's complaint comes within the scope of, *inter alia*, section 94(3) of the *Code*, the Board therefore finds that the onus of proof shifts to the employer pursuant to section 98(4) of the *Code*. The reasons that caused the Supreme Court of Canada to conclude that the "statutory presumption" at section 17 of the Quebec *Labour Code* did not apply to the various complaints filed under section 15 thereof, including the specific reinstatement requests, are not relevant to the PSAC's complaint.

B–Has the Employer Satisfied the Board that the Employer's Decision, Communicated to the Airport Authority on September 24, 2008, to Increase its Bid on the Wildlife Control Contract, was not Tainted by Anti-Union Animus?

[103] A determination of the date on which the Corps made its decision to scrutinize the costs of the wildlife control contract is, in the view of the Board, a critical element in the evidence and, by extension, a critical element in the assessment of whether the Corps is or is not able to rebut or discharge the reverse onus provision of the *Code*. Stated another way, if the Corps's decision to significantly increase the proposed 2009 billing rates was a reaction to learning of the union's organizing drive, then the Corps will not be able to demonstrate an absence of anti-union animus.

[104] The Board finds that the evidence of the SVP as to what caused him to question the adequacy of his "pre-vacation" 8% proposed billing rate increase is not particularly cogent. The Board also

finds it odd that neither the CEO nor the SVP seem to have a firm recollection of the date and place they first discussed the SVP's concerns over the adequacy of the proposed 8% billing increase and decided that the Corps should examine the revenues and the costs of the wildlife control contract more closely.

[105] Having said that, the *viva voce* evidence and the related documentary evidence, particularly the worksheet and spreadsheet found at Exhibit 8, Tab 9, are sufficiently cogent to satisfy the Board that the Corps made its decision to scrutinize the revenues and the costs of the wildlife control contract some time prior to September 20. The Board finds that the worksheet created by the VP Finance, which was discussed at the meeting held on the morning of Monday, September 22, 2008, had been prepared prior to September 22, 2008. The Board is satisfied that a meeting did occur on the morning of Monday, September 22, 2008, and that the CEO, the SVP and the VP Finance were present at that meeting. The Board also finds that the Corps concluded at that meeting, on the basis of its review of the worksheet, that the revenues generated by the contract did not provide the Corps with a sufficient or customary margin and that the margins would continue to deteriorate over the balance of 2009 as the hourly pay rates of the wildlife control officers continued to increase.

[106] The Board finds that the union held a meeting on September 22, 2008, to promote the union and the Board finds that all or essentially all of the approximately 14 commissionaires working as wildlife control officers attended that meeting. The evidence is sufficiently clear, and the Board finds, that the Corps became aware of the union's organizing meeting on the next day, on September 23, 2008. The Board finds that the Corps's decision to increase the proposed 2009 billing rates to recover a sufficient or customary margin was made before the SVP became aware, on September 23, 2008, of the union's organizing efforts and before the SVP relayed that information to the CEO.

[107] It is true that the specific 2009 billing rates proposed by the Corps in its September 24, 2008, email to the Airport Authority were significantly, and perhaps remarkably, higher than the general 8% billing rate increase that the Corps had proposed in its August 28, 2008, communications to the Airport Authority. That said, having reviewed the relevant evidence in its entirety, the Board is satisfied that the higher proposed billing rates set out in the September 24, 2008, email were copied

from the spreadsheet that was executed and discussed by the executive of the Corps at a meeting on September 23, 2008. Moreover, the higher proposed billing rates in the September 23, 2008, spreadsheet are derived from and consistent with the data set out in the worksheet discussed on September 22, 2008, which data led the Corps to conclude that the margins under the wildlife control contract were insufficient and deteriorating. Again, the Board accepts that the worksheet was prepared prior to the meeting of September 22, 2008, and was discussed at that meeting.

[108] The Board is fully aware that the union, through its cross-examination, highlighted various errors and inconsistencies in the worksheet and the spreadsheet. Those various errors do not change the finding that the Corps's decision to scrutinize the revenues and the costs of the wildlife control contract was made before the Corps became aware of the union's organizing drive. The various errors in the worksheet and in the spreadsheet are not of a sufficient magnitude to alter the Corps's conclusion that the margins under the wildlife control contract were insufficient and deteriorating.

[109] The chronology of events set out above, and the Board's findings arising from that chronology of events, constitutes clear, cogent and convincing evidence that the Corps's decision to significantly increase the proposed 2009 billing rates under the wildlife control contract, a decision that the Corps communicated to the Airport Authority in an email dated September 24, 2008, was a decision that was not motivated or tainted by anti-union animus.

[110] That finding, in itself, is sufficient to rebut the reverse onus provision of the *Code*. However, through an abundance of caution, the Board has also considered the events that transpired between September 24, 2008, and February 28, 2009, when the Corps's participation in the wildlife control contract came to an end. The Board has carefully reviewed the Airport Authority's October 28, 2008, letter to the Corps's as well as the Corps's November 21, 2008, letter, including the attachment thereto, to each of the wildlife control officers advising them of the loss of the contract effective on February 28, 2009. The Board does not see anything in either of those two letters—or in the evidence surrounding the circumstances that caused those two letters to be written—to constitute anti-union animus. The Board rejects the suggestion that the Corps's November 21 letter and the reference therein to **pay rates**—as opposed to billing rates—was, as alleged, an effort to throw the union off track. It is true, going back to 2006, that the Corps did, at one time, disclose both the billing rate and

the underlying pay rate to the Airport Authority. There is no evidence, however, that the Corps ever disclosed anything other than pay rates only to those commissionaires who were working as wildlife control officers. Indeed, it is the understanding of the Board that it would be exceptional and inappropriate for the Corps to disclose billing rates to its employees.

[111] The Board therefore finds that the Corps has lead sufficient, clear, convincing and cogent evidence to refute, on a balance of probabilities, those portions of the PSAC's complaint that allege that the Corps failed to comply with section 94(3) of the *Code*.

C–Has the Union Satisfied the Board that the Employer, or a Person Acting on Behalf of the Employer, Interfered With the Formation of a Trade Union, or the Representation of Employees by the Trade Union, or Otherwise Acted Contrary to Section 94(1) of the *Code*?

[112] The burden of proof rests with the PSAC to demonstrate a violation of section 94(1) of the *Code*. The Board finds no evidence that the Corps interfered with the representation of the wildlife control officers by the PSAC, or otherwise acted contrary to section 94(1) of the *Code*, at any time material to this complaint. All of the evidence analyzed above, for the reasons stated above, touching on the history of the relationship between the Corps and the Airport Authority in the negotiation of billing rates, on the events leading up to the Corps's September 24 email setting out the new, proposed 2009 billing rates and, ultimately, on the cancellation of the wildlife control contract effective February 28, 2009, also does not demonstrate a violation of section 94(1) of the *Code*.

[113] More specifically, the PSAC relies on the three letters written by the Corps's CEO regarding the PSAC's certification of those commissionaires working on the CBSA contracts. There is no evidence that the PSAC objected to the content of those letters or formally challenged the propriety of the communications set out therein, at any time. A review of the letters indicates that the Corps intended that the communications set out in the letters be balanced. The letters dated July 4, 2007, and July 11, 2007, appear to be balanced communications. For example, the first letter encourages those commissionaires to become informed by, among other options, talking to the union. The letters were addressed to those commissionaires providing services pursuant to various contracts with the CBSA. The 14 commissionaires providing wildlife control services at the Vancouver Airport were not the target of these three letters. There is no evidence that the letters came to the attention of the

wildlife control officers. The first two letters—dated July 4 and July 11, 2007— are, in the Board's view, too distant in time to be relevant to the issues in this complaint (events that reached their peak over one year later, on or about September 24, 2008).

[114] The third letter is somewhat different. The Board recognizes that the third CEO letter is dated September 22, 2008, which is the same date the CEO, the SVP and the VP Finance held their first meeting to scrutinize the costs of the wildlife control contract. It is also the same date on which the PSAC held its organizing meeting with the wildlife control officers; however, as stated above, the Board found that the Corps did not become aware of the organizing meeting until September 23, 2008. Arguably, in this letter, the Corps was perhaps less successful at achieving its objective of balanced communications. That said, if the PSAC objected to the propriety of the communications set out in the letter, it was incumbent on the union to challenge it in a timely manner. There is no evidence that the union did so. There is also no evidence before the Board to indicate that this third letter, also addressed to the commissionaires providing services under the CBSA contracts, came to the attention of any of the 14 commissionaires providing wildlife control services. Accordingly, the Board finds that these three letters do not constitute evidence of the type of employer interference that is prohibited under section 94(1) of the *Code*. The Board finds no evidence of a violation of section 94(1) of the *Code*.

D–What Remedy, if any, is Appropriate?

[115] Since the Board has found that the employer has discharged the burden of proving that there has not been a violation of section 94(3) of the *Code*, and since the Board has found no evidence of a violation of section 94(1) of the *Code*, the question of a remedy does not arise.

IX–Conclusion

[116] For the reasons stated above, and having regard to all of the evidence presented at the hearing, including the evidence of the history of the billing rate negotiations between the Corps and the Airport Authority since 2005, the Board is satisfied that the Corps has discharged the burden of proving, on a balance of probabilities, that its decision, communicated in its email dated September 24, 2008, to significantly increase its proposed billing rates for the 2009 wildlife control

contract, was not tainted by anti-union animus. For greater certainty, the Board's examination of the evidence also includes an examination of the conduct of the Corps up to February 28, 2009, the date on which the Corps ceased to provide wildlife control services to the Airport Authority. The Board is also satisfied that the Corps has discharged the burden of proving that a violation of section 94(3) did not occur in that period of time. The Board is satisfied that the Corps has proven that a violation of section 94(3) of the *Code* did not occur.

[117] For the reasons stated above, the Board finds that there is no evidence that the Corps or anyone acting on its behalf, in the period of time to which this complaint relates, has committed an unfair labour practice or has otherwise acted contrary to any other subsections of section 94 of the *Code*. The Board therefore dismisses the complaint filed on September 8, 2009.

William G. McMurray
Vice-Chairperson

David Olsen
Member

Dissent of Mr. John Bowman, Member

[118] I agree with the majority of the panel that the main issue before us was whether the employer satisfied the Board that its decision, communicated to the Airport Authority on September 24, 2008, to substantially increase its bid on the wildlife control contract, was not tainted by anti-union animus. I must respectfully disagree with the decision of my colleagues, however, and find for the following reasons that the employer did not satisfy the reverse onus provisions of the *Code*. I would find on a balance of probabilities test, that the employer's actions were tainted by anti-union animus. I do so for the reasons that follow:

[119] As noted in the majority decision, the employer led considerable evidence regarding the three previous rounds of contract negotiations with the Airport Authority, in 2006, 2007 and 2008. The

2007 round was particularly relevant as it was the only one of the three where there was a major dispute between the parties. The evidence showed that the employer's conduct in that round of negotiations was completely different from what transpired in the 2008 negotiations. After the Airport Authority rejected the employer's contract proposal, no ultimatum was issued to the Airport Authority. Instead, the employer continued to provide services and billed Vancouver International Airport (YVR) at the rates consistent with their proposal. According to the evidence, this went on for a period of time until YVR eventually agreed to pay the rates in question. The SVP described the Airport Authority's conduct during that round of negotiations as being consistent with the "master servant relationship" between the two parties.

[120] It is clear from the evidence that the Airport Authority asked the employer for its proposed rate increase for 2009 so it could do its internal budget preparations. The SVP provided a figure of 8 % and copied his email to the CEO and the Vice-President Finance. Neither of the senior officers raised any issue with the figure quoted at the time, despite concluding only a month later that the figure proposed was "way too low." This figure was quoted despite the fact that all of these officers were aware of wage increases already paid to the members of the bargaining unit as well as future increases that were to be paid. These increases were later used to justify the significant increase in the employer's bid that was communicated to the Airport Authority on September 24, 2008. The SVP testified that he simply made a mistake. The CEO testified that he just presumed the figures were right given that the SVP came up with them. This evidence is entirely inconsistent with the suggestion throughout the employer's evidence that it was aware of problems with the YVR contract for some time, and was concerned that the Corps was losing money on the contract.

[121] The SVP testified that he became concerned about the quote that he gave the Airport Authority while he was on vacation. He took no steps while on vacation to communicate that concern to the other officers. When he returned from vacation, he allegedly told the CEO on September 8, 2008 of these concerns. Yet nothing was done about these allegedly serious concerns until the week of September 22, 2008. It was suggested that the employer waited until then because that was the week when a payroll would be produced which included a new wage increase. This is not a credible explanation. The employer clearly knew what the increase was and could easily have included such information into a financial analysis, if it had serious concerns about the quote that it had given the

Airport Authority. This unnecessary delay casts doubt on the suggestion that the employer had any serious concerns on September 8, 2008 about the 8% figure that it had previously given to the Airport Authority.

[122] It is clear on the evidence that the employer, on September 24, 2008, advised the Airport Authority (the "master" in the master servant relationship), that its proposed increase for 2009 would be somewhere between 18.7 and 29.3%, depending on the job classification, instead of the 8% previously submitted. On top of this, the "servant" issued an ultimatum that it would cancel the contract if it did not receive acceptance of these new rates by November 1, 2008. The employer did not give the Airport Authority any advance warning of this dramatic change in its position. It is unchallenged that the employer knew about the union's attempt to organize the employees in the workplace when it issued this email to the Airport Authority.

[123] In his evidence, the CEO attempted to minimize this dramatic change in the employer's position by suggesting that the original 8% figure given to the Airport Authority was not necessarily their final position. This evidence was also not credible. Clearly, the Airport Authority was asking for the employer's bid figure in August of 2008 for its internal budgetting purposes, as stated in the emails at the time. The Airport Authority was entitled therefore to place some reliance on the figure supplied by the employer, and would surely not have internally budgetted an amount of over double what the employer asked for.

[124] Both the CEO and SVP testified that they were surprised that the Airport Authority did not either make a counter-offer to the Corps or open up the contract for bid through a Request for Proposals (RFP) process. The suggestion that they expected a possible counter-proposal suggests that their last position to the Airport Authority was subject to further negotiations. This raises the question then as to why the Corps gave their client the ultimatum that they did. It also raises the question of why the employer did not make any effort to try and negotiate with the Airport Authority after they were clearly advised that their proposed rate increase was not acceptable. The letter sent to the employer from the Airport Authority dated October 28, 2008 did not foreclose further negotiations. The letter referred to the earlier ultimatum and stated if that "continues to be your intention," then a formal Notice of Cancellation should be provided. This response appeared to leave

the door open to alternative action by the Corps, such as further negotiation. However, the Corps simply responded by providing a notice to cancel the contract. Such action is completely inconsistent with what would be expected of a contractor seeking to genuinely renew a contract from a client.

[125] The majority decision places great weight on the spreadsheet put into evidence by the employer, which allegedly justified the substantial increase sought from the Airport Authority. The majority accepts that this spreadsheet was produced on September 22, 2008, before the employer learned of the union's organizing efforts. The evidence does not support such a finding in my view. It is noteworthy that the spreadsheet itself is undated. It is also surprising that there is no documentation whatsoever to support the contention that the employer had concerns about the 8% bid figure originally given to YVR–concerns that allegedly originated on September 8, 2008 when the SVP returned from vacation. There is evidence on other issues indicating that this employer had a practice of exchanging emails on issues of concern, yet there is not a single email or any other dated document on this important point and no document that supports the testimony that this spreadsheet was prepared on September 22, 2008. The person who prepared the document, the Vice-President Finance, did not testify. The only document that is dated that was produced by the employer regarding the decision to change its proposal to YVR is a spreadsheet prepared for the Board of Directors of the employer, which had a date of September 24, 2008. This was the same day the notice was sent to YVR and a day after the employer said it became aware of union organizing activity at the workplace.

[126] The entire timeline under which the employer proceeded regarding its change to the rate it provided the Airport Authority is both illogical and highly suspicious. I am not simply referring to the fact that the employer gave notice to YVR of a substantial hike in its bid the day after it learned about the union's organizing campaign. The whole process leading up to the increased bid makes little sense. The employer allegedly had concerns about the 8% bid on September 8, 2008 but took no immediate steps to deal with the issue. It waited until the week of September 22, then hastily put together a spreadsheet that contained numerous significant errors according to the evidence heard from the employer witnesses, and then quickly submitted a revised bid and the ultimatum for quick acceptance of the bid to the Airport Authority. What was the sudden rush to get out this information to the Airport Authority, given the lackadaisical approach taken by the employer to the issue in the

past? I conclude that the employer quickly put together its substantially increased bid and ultimatum after hearing about the union's organizing efforts, and they did so in order to ensure that they would lose the contract.

[127] I find that the employer breached sections 94(3)(*a*) and 94(3)(*e*) of the *Code*, on the basis that its decision to dramatically increase its billing rate to YVR, which led to the loss of the contract, was motivated by anti-union animus.

John Bowman
Member